

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 437 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE R.P.DHOLAKIA****HONOURABLE MR.JUSTICE MD SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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PRAVINBHAI PUNJABHAI RATHOD HARIJAN - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :

MR KR RAVAL for Appellant(s) : 1,
Mr.R.C.Kodekar, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA
and
HONOURABLE MR.JUSTICE MD SHAH

Date : 27/12/2005**ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)**

1. The present appellants have preferred this appeal challenging the judgment and order dated 18-1-2003 passed by the learned Additional Sessions Judge, Fast

Track Court, Amreli, in Sessions Case no.12 of 2002 whereby they came to be convicted and sentenced to suffer imprisonment for life.

2. Facts of the prosecution case, briefly stated, are as under:

Deceased Vishnubhai Khodabhai was residing at Navapara, Chalala, District Amreli and when he was coming from his house to Chalala Station Road when he reached near Brahm Samaj Building, the appellant-accused met him and demanded money and during that altercation, all of a sudden, the appellant-accused took out a knife from waist(nefa) of his pant and inflicted the knife blow on the vital parts of the body of the deceased i.e. chest and abdomen. One blow was given on his left thigh. In all five knife blows were given as a result of which the deceased fell down and immediately he has been taken to the hospital where on arrival of the Police Officer, complaint Exh.43 has been registered. The concerned Officer then wrote the Yadi and called the Executive Magistrate for the purpose of recording Dying Declaration of the deceased. In pursuance of that on receiving the Yadi for recording Dying Declaration, the concerned Magistrate Chandulal Kanjibhai went to the hospital, and

thereafter, after taking all reasonable care and caution and also after obtaining the endorsement from the Doctor regarding the physical condition of the victim to make the statement, he recording the Dying Declaration Exh.25, and thereafter, as the victim succumbed to his injury offence to that effect came to be registered. The appellant-accused was arrested and sent to judicial custody. The investigating officer then further investigated into the matter and on completion of the investigation submitted chargesheet against the appellant-accused. As the offence in question was exclusively triable by the Court of Sessions, the case was committed to Sessions Court at Amreli and the case was allotted to the learned Additional Sessions Judge, Fast Track Court, Amreli, for disposal. The learned Additional Sessions Judge framed charge against the appellant accused who pleaded not guilty to the same and claimed to be tried.

3. To prove its case against the appellant-accused the prosecution has examined in all 24 witnesses and also placed reliance on the documentary evidence which are 27 in number, and thereafter, upon submission of the closing Purshis by the learned A.P.P., learned Addl.Sessions Judge, Fast Track Court Amreli, recorded the further statement of the accused under Section 313 of the

Criminal Procedure Code qua the incriminating evidence which goes against the appellant-accused, and thereafter, opportunity has been given to the appellant-accused in pursuance of which, the appellant has chosen not to enter into the witness box, but he has chosen to examine one person as his witness. In pursuance of that the defence has also examined one Nagjibhai Haribhai and after giving sufficient opportunity to the parties concerned, the learned Addl.Sessions Judge, Fast Track Court, Amreli, passed the judgment and order of conviction and sentence as stated in para-1 of this judgment, giving rise to the present appeal.

4. Initially, after hearing the learned Counsel for the appellant Mr. Raval we have called for the Record and Proceedings of the case and on receipt of the R & P we have heard Mr. Raval at length. Mr.Raval has mainly concentrated his argument on the point of Dying Declaration, more particularly, the evidence of the Executive Magistrate Shri Chandulal Kanjibhai Tank, PW 10, Exh.23. We have gone through his evidence very carefully and in details and we find the same to be trustworthy from all aspects of the matter, more so, because before recording the Dying Declaration, the Executive Magistrate has taken all possible care and caution and saw to it that nobody remained present very

near to the deceased at the time of recording the Dying Declaration; he has obtained permission and took endorsement from the Doctor concerned and after confirming that the victim was in a fit state of mind to give the Dying Declaration, the Dying Declaration was recorded in a question and answer form after completing all formalities and the same has been proved through Executive Magistrate Shri Chandulal Kanjibhai Tank PW 10, Exh.23 and nothing contrary has come out from his cross-examination. In short, the Dying Declaration recorded by the Executive Magistrate is trustworthy and the Court below has rightly relied upon it. We also find that the complaint given by the victim recorded by the Police Officer at the hospital gets corroboration from the Dying Declaration and when the victim was in a fit state of mind when the Dying Declaration was recorded after taking due care and caution, and when it is trustworthy, the prosecution does not require any further corroboration because the victim and the appellant-accused were known to each other before the incident, they met, they talked, and therefore, the question of mis-identification also does not arise. Over and above this, the intention of the appellant-accused to kill the deceased is also clearly established from the fact that the appellant accused was armed with a knife which he had hidden and taken out

from his waist and inflicted five knife blows on the vital part of the body of the deceased. Thus, looking to the manner in which the crime in question is committed, it cannot be said the incident in question has taken place abruptly or as a result of sudden provocation. In that view of the matter, this being a clear intention on the part of the appellant accused to commit murder of the deceased for which he had given five blows of knife to the deceased, and therefore, it cannot be said that the case of the appellant-accused attracts any Section of the Indian Penal Code other than Section 302. We, therefore, we do not find any justification to interfere with the well reasoned judgment and order of conviction and sentence passed by the learned Addition Sessions Judge.

5. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:

"....This Court has observed in Girija Nandini Devi Vs. Bijendra Nandini Chaudhary (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court,

expression of general agreement with the reasons given by the Court, the decision of which is under appeal, will ordinarily suffice."

6. In the result, the appeals fails and is hereby dismissed.

(R.P.Dholakia, J.

(M.D.Shah, J.)

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